

REMARKS**I. Obviousness-type Double Patenting over US 4,738,974**

Claims 1 and 35 are rejected under the judicially created doctrine of obviousness type double patenting over US 4,738,974 (the "'974 patent"). The Examiner correctly states in the Office Action that the §102(b) rejection of record over the '974 patent was withdrawn. However, the §103 rejection of record over the '974 patent was also withdrawn. In this regard, the Examiner's attention is directed to page 3 of the Office Action (Paper No. 4), mailed May 14, 2001, and page 2 of the Office Action, mailed December 3, 2001.

The §103 rejection of record over the '974 patent was removed in view of the Declaration of Tommy Andersson that was submitted in the preceding application, U.S. Patent Application Serial No. 09/187,277, filed November 6, 1998, now abandoned. Applicants' comments regarding the nonobviousness of the claimed invention vis-à-vis the '974 patent, as supported by the Declaration of Tommy Andersson, appear in the Amendment, filed November 7, 2001, at pages 5-6, and the Amendment, filed May 29, 2002, at pages 4-7.

An obviousness-type double patenting rejection is analogous to the nonobviousness requirement of 35 U.S.C. §103. As such, the analysis employed in an obviousness-type double patenting determination must be based on the factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 U.S.P.Q.4589 (1966). The Examiner's attention is directed to M.P.E.P. §804 (II)(B) (1) at 800-22 for a discussion on this matter. Therefore, the obviousness-type double patenting rejection in view of the '974 patent should be withdrawn for the same reasons that the §103 rejection was removed.

Withdrawal of the obviousness-type double patenting rejection in view of the '974 patent is requested.

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II. Obviousness-type Double Patenting over US 6,369,085

Claims 1 and 35 are rejected under the judicially created doctrine of obviousness type double patenting over US 6,369,085 (the "'085 patent").

Submitted concurrently herewith, under separate cover, is a Terminal Disclaimer overcoming the obviousness-type double patenting rejection in connection with the '085 patent. Withdrawal of the rejection is requested.

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CONCLUSION

Applicants have made a good faith attempt to respond to the Office Action. Claims 1 and 35 are directed to patentable subject matter. Accordingly, Applicants request reconsideration and allowance of the claims.

Any additional fee due in connection with this response should be charged to Deposit Account No. 23-1703.

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Respectfully submitted,



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